

Exhibit A

**HIGHLY CONFIDENTIAL DEPOSITION OF GREG HAMILTON
CONDUCTED ON THURSDAY, JANUARY 21, 2010**

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESALE
PRICE LITIGATION

THIS DOCUMENT RELATES TO:

United States ex rel.
Linnette Sun and Greg
Hamilton, Relators

v.

Baxter Hemoglobin
Therapeutics and Baxter
International Inc.

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)
)
) MDL No. 1456
)
)
) Master File No.
)
) 1:01-CV-12257-PBS
)
)
) Sub-Category Case
)
) No. 1:08-CV-11200
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HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Deposition of GREG HAMILTON, taken before
MARGARET A. BACHNER, CSR, RMR, CRR, and Notary Public,
pursuant to the Federal Rules of Civil Procedure for
the United States District Courts pertaining to the
taking of depositions for the purpose of discovery, at
Suite 600, 300 North LaSalle Street, Chicago,
Illinois, on the 21st day of January, A.D. 2010, at
10:32 a.m.

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1 There were present at the taking of this
2 deposition the following counsel:

3 on behalf of the Relators;

4 BY: MARK ALLEN KLEIMAN, ESQUIRE
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6 Venice, California 90292
7 310-306-8094

8 on behalf of Baxter Hemoglobin Therapeutics
9 and Baxter International Inc.;

10 DICKSTEIN SHAPIRO LLP
11 BY: J. ANDREW JACKSON, ESQUIRE
12 RUCHI JAIN, ESQUIRE
13 1825 Eye Street, N.W.
14 Washington, DC 20006-5403
15 202-420-2200

16 on behalf of Bayer Corporation.

17 SIDLEY AUSTIN LLP
18 BY: ENJAMIN KEITH, ESQUIRE
19 One South Dearborn Street
20 Chicago, Illinois 60603
21 312-853-7814

22 ALSO PRESENT:

23 MR. MICHAEL BOLTON,
24 In-House Counsel, Baxter International Inc.

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4 By Mr. Jackson 5

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1 are wrong. But it's -- it's an accurate
2 representation.

3 Q. Have you ever worked for Baxter or any of
4 the -- either of the Baxter entities that are
5 identified as defendants in this case?

6 A. No, I have not.

7 Q. Have you ever consulted with Baxter or
8 either of the Baxter entities who are defendants in
9 this case?

10 MR. KLEIMAN: Objection. Ambiguous.

11 BY MR. JACKSON:

12 Q. You can answer the question.

13 A. I have not been paid as a consultant for
14 Baxter.

15 (Deposition Exhibit Number 5 was
16 marked for identification.)

17 (Document tendered to the
18 witness.)

19 BY MR. JACKSON:

20 Q. I show you what's been marked as Deposition
21 Exhibit 5. Deposition Exhibit 5 is a document that at
22 the top left corner says "Baxter Products W/AWP
23 History." And under that it's "04.11.05."

24 Have you ever seen this document before?

25 A. Yes, I have.

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1 A. I'm not sure exactly, but I'd say probably
2 1993.

3 Q. Do you still have these original documents?

4 A. Yes.

5 Q. In your possession or in your counsel's
6 possession?

7 A. In my possession.

8 Well, let me -- when you say "original
9 documents," I have the actual appointment books in my
10 possession. I made photocopies of all these pages and
11 sent them to Mr. Kleiman, who has those in his
12 possession.

13 Q. I understand. I'm asking about the
14 originals because we may want to see the originals.
15 So, I'd ask you not to destroy or otherwise get rid of
16 the original documents.

17 A. I'll keep the shoebox intact.

18 Q. All right. Let's look at the first page of
19 Deposition Exhibit 19. The first page of Deposition
20 Exhibit 19, which appears to be a calendar date of
21 January 24, 2005, has the word "Baxter."

22 And then can you tell me what the word is
23 after that?

24 A. Sure. "Royal."

25 Q. And what's after that? There is some other

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1 notes or comments or marks.

2 A. It looks like it says, "Plus?"

3 Oh, you want me to try to interpret that
4 for you in Greg hieroglyphics?

5 Q. I would.

6 A. That probably means meeting with Baxter,
7 Royal and possibly somebody else.

8 Q. Okay. And where were you meeting with
9 Royal on January 24th, 2005?

10 A. I don't know.

11 Q. Did you meet with them then?

12 A. I can't say for certain. Typically if
13 there's something like this in my appointment book and
14 the appointment is cancelled, it will be scratched
15 out. So, I would say I probably did.

16 Q. Do you remember what the subject of your
17 meeting was at that time?

18 A. No.

19 Q. All right. Let's go to the next page,
20 GH001498.

21 Do you see that?

22 A. Mm-hmm.

23 Q. There is on that page what appears to be
24 the name "Royal Stuart."

25 Do you see that?

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1 A. Mm-hmm.

2 Q. What's the word after that?

3 A. I don't know for certain, but if I had to
4 guess, it looks like "10 a.m."

5 Q. What are the words below that?

6 A. "Noon Steve."

7 Q. Do you know what that means?

8 A. That means I had a meeting at noon with
9 Steve.

10 Q. Do you know who Steve is?

11 A. No.

12 Q. Did you meet with Royal Stuart on January
13 19th, 2005?

14 A. Again, my appointment book says I had an
15 appointment with him. That means I probably kept that
16 appointment.

17 Q. What was the subject of the appointment; do
18 you know?

19 A. Don't know.

20 Q. If it occurred, do you remember what was
21 said during that appointment?

22 A. No, I do not.

23 Q. All right. Can you please go to the next
24 page, GH001499? Are you there?

25 A. I'm there.

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1 Q. I see what appears to be "NHF 4-5-6."

2 Do you see that?

3 A. Yes, I do.

4 Q. Can you explain that to me?

5 A. Yeah. That means that I was in a meeting
6 in Dallas at the Hyatt. It was the National
7 Hemophilia Foundation meeting, the 4th, 5th and 6th,
8 obviously, of November.

9 Q. And what year was that?

10 A. Good question. '04.

11 Q. I note on that same page something has been
12 blacked out or redacted.

13 Do you see that?

14 A. Yes, I do.

15 Q. Can you tell me why something was redacted
16 on that page?

17 A. Specifically I can't. Generally do you
18 want --

19 Q. Sure. Why generally are there redactions
20 throughout these pages?

21 A. I would say that's probably some personal
22 notation, something that had nothing to do with Baxter
23 or this case.

24 Q. Okay. Can I have you turn to the next
25 page, GH001500? Can you read what it says at the top

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1 of that page?

2 A. If you're referring to the part under
3 "Monday" where it says, "Baxter 1 p.m."?

4 Q. Yes.

5 A. Oh, yeah. Okay. This says, "Baxter 1 p.m.
6 North to Lake-Cook Road."

7 What that means is that I was meeting with
8 Baxter at their facility in Chicago.

9 Q. Okay. Who did you meet with that day?

10 A. That particular day I can't say for
11 certain. Typically if I was at Baxter's headquarters,
12 Pete O'Malley would have been there. But it could
13 have been -- who else was with him I wouldn't know for
14 sure.

15 Q. Do you have a specific memory what occurred
16 on that day, if that meeting actually occurred?

17 A. Was that two questions?

18 Q. I'll start over.

19 Do you remember having a specific meeting
20 on that day?

21 A. I do not know if it actually occurred. I
22 believe that's where you're going. You want me to
23 say, right?

24 Q. I'm just trying to assess --

25 A. And I'm trying to answer you honestly,

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1 okay? I'm just trying to say if it's in the
2 appointment book and it's not scratched out, that
3 means I believe I had that meeting. If you say to me,
4 "Are you absolutely certain that that meeting
5 occurred," well, no.

6 Q. And I need to know what occurred at that
7 meeting.

8 A. And my answer on that one is I don't know.

9 Q. Can you turn to the next page, GH001501?

10 A. Yes.

11 Q. Can you read that for me on that calendar
12 date?

13 A. Yes. "Noon Jeff Beck Millennium Grill."

14 Q. Who's Jeff Beck?

15 A. Baxter rep.

16 Q. Do you remember what you and Jeff Beck
17 discussed that day?

18 A. No, I do not.

19 Q. Mr. Hamilton, I'll make this a little
20 easier maybe. Several of the pages of your calendar
21 pages here mention things like NHF.

22 What does NHF mean?

23 A. National Hemophilia Foundation meeting.

24 Q. Okay. If I ask you what happened, for
25 example, at the National Hemophilia Foundation meeting

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1 that is on GH001502, will you be able to tell me what
2 occurred during that meeting?

3 A. Specifically, no.

4 Q. And will you be able to tell me what
5 occurred at any of the meetings that are identified in
6 any of these calendar pages?

7 A. There may be -- generally speaking the
8 answer is no.

9 There may be one or two where I would be
10 able to say -- for example, if you look at 1506,
11 Friday, August 16th, where it says, "Slides to
12 Baxter," okay? And it was just 10 days before that we
13 have a -- I have a notation for a Baxter conference
14 call.

15 The slides going to Baxter would have been
16 my what I call PBM 101 slides. This is where we were
17 discussing things about PBMs and what their
18 involvement in the specialty pharmaceutical market's
19 gonna be. And I had a slide presentation that
20 described, you know, some just general stuff about how
21 PBMs operate.

22 So, again, we can go back and say that,
23 well, that means that probably Wednesday, February 5th
24 was a discussion about PBMs in the specialty pharmacy
25 market and how it applies to both IGIV and to

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1 hemophilia products.

2 And the following one that says "Slides"
3 would have been I sent them the deck, the slide deck.

4 However, other than that -- let me help
5 you. Other than that, for these entries where it says
6 Baxter this, NHF that or whatever, it merely indicates
7 that I had a meeting scheduled with them. And I can't
8 say that it actually happened for certain. And what
9 the subject was I can't say for certain, either.

10 Does that help?

11 Q. It does. Thank you.

12 Let's go to GH001502, "NHF."

13 Can you tell me what year this is?

14 A. I have a notation at the top that says '03.

15 Q. Okay. That handwritten note at the top is
16 your note?

17 A. My handwriting, yes.

18 Q. And was that created when you made the
19 copies of this?

20 A. Yes. And I did that, obviously, because
21 this particular page of the appointment book didn't
22 have the year on it.

23 Q. Okay. Where were you employed at the time?

24 A. In 2003?

25 Q. 2003.

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1 (Whereupon, the deposition
2 resumed at 1:36 p.m.)
3 GREG HAMILTON,
4 called as a witness herein, having been previously
5 duly sworn and having testified, was examined and
6 testified further as follows:

EXAMINATION (Resumed)

8 BY MR. JACKSON:

9 Q. Mr. Hamilton, can I refer you back to
10 Deposition Exhibit 6, your Declaration, please?

11 A. Yes.

12 Q. In paragraph 2, the final sentence, you
13 refer to, "Those meetings specifically concerned the
14 pricing of several of the Baxter products discussed in
15 the Complaint."

16 Do you see that?

17 A. Yes, I do.

18 Q. What pricing were you referring to?

19 A. The ones -- and again, pricing is a big
20 subject. We had discussed -- let me read the
21 paragraph first.

22 (Short interruption.)

23 BY THE WITNESS:

24 A. Again, "pricing" is kind of a big word.
25 So, when I refer to "pricing," I'm referring to the

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1 price that Baxter was selling to me as a client.

2 BY MR. JACKSON:

3 Q. At Express Scripts?

4 A. That is correct. So, of course, some of
5 the stuff would have been basically, you know,
6 contract negotiations. Certainly part of -- you know,
7 with every price of what a customer or a manufacturer
8 sells their drug for there's also the accompanying AWP
9 that goes along with that.

10 In addition to that, we also discussed on
11 several occasions what's called PHS, otherwise known
12 as 340B pricing.

13 Q. All right. So, let's -- I understand when
14 you refer to some of those communications referred to
15 the price to Express Scripts. What was your
16 communication with Larry Guiheen or Peter O'Malley
17 regarding AWP?

18 A. I actually -- I mean, I can't tell you any
19 specific time and exactly what we talked about.

20 Q. Okay. With regard to the PHS, the 340B
21 pricing, can you tell me what you discussed with these
22 gentlemen as you reference in paragraph 2?

23 A. I can. There was one particular time, and
24 I can't tell you what the date was, but it was one of
25 the meetings I had at Baxter headquarters.

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1 Pete O'Malley had asked me to come out and
2 discuss contracting issues. He brought into the room
3 people that he identified as Baxter contracting --
4 people who work in their Contracting Department. And
5 he asked me to go through and explain to them how 340B
6 pricing worked, how it was calculated and
7 administered. And I did that.

8 Q. Now, is any of the information that took
9 place in that meeting regarding 340B the subject of
10 any of your claims in this Complaint that is Exhibit
11 7?

12 A. No, not specifically.

13 Q. In paragraph 4, the first sentence is the
14 following: "While serving in those positions I
15 frequently met with Baxter's senior management to
16 discuss the market for hemophilia products."

17 Do you see that?

18 A. Yes, I do.

19 Q. Do you remember specific conversations you
20 had with senior management regarding hemophilia
21 product pricing?

22 A. Well, --

23 Q. I'm sorry. The market for hemophilia. You
24 don't say "pricing" there. You say, "market."

25 A. Yes. There is one conversation that I do

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1 remember very specifically. I'll address the others
2 after I address this first one.

3 And that was -- it was when we met with
4 Larry Guiheen. And this was -- oh, I'm going to guess
5 this was within six months of Advate's launch. And I
6 met with Larry at some sort of a trade show. It could
7 have been NHF. But I do remember it was in an exhibit
8 hall. I can picture where we were.

9 So, we were in an exhibit hall, and we were
10 talking about Advate. I expressed to Larry that my
11 opinion that they had come out with, they'd launched
12 with too high of a premium for Advate over their other
13 product and the comparable products, the recombinant
14 products, and that they came out just too high and
15 they needed to drop that price.

16 And I felt that his uptake on conversions
17 from other factor products to Advate was being
18 inhibited by the extensive or excessive margin. You
19 know, they were charging too much for it in comparison
20 to the other drugs.

21 And I remember suggesting, you know, if you
22 could just drop that 7 or 8 cents or whatever the
23 number was at the time, I think that you could reduce
24 the differential to where it's not a deal breaker for
25 insurance companies and people aren't gonna go, "Wait

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1 a minute. 15 cents a unit times a couple hundred
2 thousand units a year, prove to me that Advate's that
3 much better," which, of course, would be a very
4 difficult thing to do because it's a conceptual issue.

5 So, I made that point, and I said, "If you
6 could get it down to where it's, you know, 5 cents, 6
7 cents, I don't think you'd have the push back and you
8 could convince the patients, you know, to recommend or
9 to ask their doctor for a switch and that they could
10 then get it through the insurance companies."

11 So, that was one very, very specific
12 discussion we had on pricing. It was of Advate.

13 Q. Do you remember when Advate launched?

14 A. Yeah. It was, like, spring of 2003, summer
15 of 2003, somewhere in there.

16 Q. And when you say "launched," do you mean
17 actually can start making sales?

18 A. Yeah. I forgot the approval date, but we
19 can look that up. I think it was approved in, I don't
20 know, April, May, something like that. But there
21 wasn't a great delay from when it was approved to when
22 it was launched. It was probably, I don't know, two
23 months at the most.

24 Q. Okay. And when you say -- this is my term,
25 my phrase, "uptake or uptick over its other products,"

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1 did you mean the price that Baxter would sell to the
2 market over the price it would sell to the market for
3 Recombinate?

4 A. Yes. The difference -- what I was trying
5 to point out was that the difference -- Recombinate
6 was selling for, let's say, 89 cents at the time. And
7 when they launched Advate, it came out as a buck 15
8 ballpark. And so, the difference between 89 cents and
9 \$1.15 was just too great.

10 Q. For what?

11 A. For universal acceptance, for insurance
12 companies, for payers to say, "Yeah, it's worth it.
13 I'll pay that much more." Because if they're going to
14 pay an extra 20 cents a unit and patients are using
15 anywhere from a hundred thousand to a million units a
16 year, that turns out to be a lot of dollars. And it
17 got people's attention.

18 So, the difference was so great -- it's
19 kind of like pricing that's called the noticeable
20 difference curve. It was the same thing. It was so
21 noticeable that it got attention.

22 Had the number been smaller, it would have
23 passed through without people scrutinizing it and
24 more -- and patients would have been accepted and
25 insurance companies wouldn't have even probably given

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1 it a second thought in terms of paying.

2 And so, therefore, they'd be able to
3 convert patients from current therapies, whether it be
4 theirs or someone else's, to Advate more rapidly than
5 what they were doing.

6 Q. Okay. So, from your perspective you did
7 not believe that the market price of Advate, the new
8 therapy, that the delta was not justified by the
9 difference in the products?

10 A. Yes. But let me say justified in the minds
11 of the people who were actually paying the bill, the
12 payers, okay? And the delta was so large that it got
13 their attention. And that was the key. First of all,
14 it got their attention. The delta was so large that
15 it jumped out, you know.

16 And all of a sudden the claims were bigger
17 than they were before and the dollar signs caught
18 their attention. That brought scrutiny to the
19 product. And that made people then question is this
20 new product worth that much more than what the other
21 one is?

22 And, of course, Baxter was standing up
23 straight and saying, "Recombinate's a very safe drug
24 and it treats Factor VIII." And they were saying all
25 these wonderful things about Recombinate. As a matter

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1 of fact, they were saying the same thing about the
2 plasma products. Yeah, plasma products are perfectly
3 safe. Recombinate's perfectly safe.

4 Okay. Why do you want to spend 15, 20,
5 20-some cents more for another safe product? Does it
6 treat the bleed any better? Well, no. Well, then,
7 why this huge premium?

8 And that -- again, the delta was so big
9 that it was getting insurance companies', what I call
10 payers, attention, and it was inhibiting their
11 conversion rate.

12 Q. Conversion rate, again just to understand,
13 you mean converting from some other form of factor up
14 to Advate?

15 A. Let's not say "form" because then you get
16 into whether it's Factor VIII or Factor IX.

17 Q. I don't mean that.

18 A. I don't, either, but I just want to be
19 clear. From some competitor, let's say, including
20 themselves.

21 Q. Got it. Switching from a previously used
22 product to Advate?

23 A. Factor VIII product to Advate, yes.

24 Q. Okay. I understand.

25 All right. In paragraph 4 the third line

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1 up, fourth line up, it says, "I also made at least
2 three trips to Baxter's Deerfield, Illinois offices to
3 meet with Baxter managers to discuss pricing."

4 Now, you've already told me about the 340B
5 conversation. And that's kind of in the next several
6 sentences.

7 Do you remember what the other two meetings
8 were about?

9 A. Not specifically, no.

10 Q. Okay. If you turn to paragraph 6, you
11 reference it this paragraph 6 of your Declaration that
12 is Deposition Exhibit 6, you reference a meeting with
13 Larry Guiheen about Baxter's pricing of Advate.

14 Is this the conversation that you and I
15 just had about the moving -- what's a good way to
16 describe the conversation we had? A marketing issue?

17 A. It's pricing and marketing.

18 Q. Okay.

19 A. And yes, that is the conversation I'm
20 referring to.

21 Q. Okay. Got it.

22 In paragraph 7 you refer to your time at
23 Express Scripts and Curascript and you talk about how
24 you, quote, interacted with Baxter's pricing managers,
25 close quote.

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1 Do you have any specific memory of pricing
2 conversations then?

3 A. No.

4 Q. And in the last sentence of paragraph 7 you
5 also reference, quote, numerous discussions with them
6 about pricing strategies.

7 Do you remember what the subject of those
8 pricing discussions were in paragraph 7?

9 A. I do not remember specific discussions.

10 (Deposition Exhibit Number 21 was
11 marked for identification.)

12 (Document tendered to the
13 witness.)

14 BY MR. JACKSON:

15 Q. Let me show you what's been marked as
16 Deposition Exhibit 21. Deposition Exhibit 21 is the
17 Memorandum in Opposition to Baxter International
18 Inc.'s Motion to Dismiss Relators' Complaint.

19 Do you see that?

20 A. Yes, I do.

21 Q. I have a generic question for you, sir. In
22 the Complaint --

23 A. Is this a generic question coming from a
24 brand manufacturer?

25 Q. -- there are repeated allegations, and I'll